

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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TIFFANY MIRANDA and  
BENJAMIN MIRANDA,

Plaintiffs

v.

A.C. MOORE ARTS & CRAFTS, INC.  
Defendant.

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Civil Action No.  
04-11337-EFH  
BBO#554526  
BBO#657559

**DEFENDANT A.C. MOORE ARTS & CRAFTS, INC.'S MOTION  
TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant, A.C. Moore Arts & Crafts, Inc. ("A.C. Moore"), in the above-captioned action hereby files this Motion to Dismiss Plaintiffs' Complaint, an action under which personal jurisdiction is based on diversity jurisdiction, for Failure to State a Claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6).

The defendant, A.C. Moore contends that the Plaintiffs' Complaint must be dismissed on the following grounds:

- 1) Count I of Plaintiff's Complaint, alleging violations of Tiffany Miranda's civil rights, is barred since she has failed to exhaust her administrative remedies with the Massachusetts Commission Against Discrimination ("MCAD") as mandated by G.L. c. 151B; Green v. Wyman-Gordon Company, 422 Mass. 551 (1996); Doe v. Purity Supreme, Inc., 422 Mass. 563 (1996)
- 2) Counts III, V, and IX of Plaintiffs' Complaint, alleging common law claims of negligence and intentional torts by Tiffany Miranda against her employer, A.C. Moore, are barred by the Massachusetts Workers Compensation Act, G.L. c. 152; Id.
- 3) Count VII of the Plaintiffs' Complaint, alleging a violation of G. L. c. 93A by Mrs. Miranda against her employer, A.C. Moore, is not a recognized cause of action under Massachusetts law; Doe v. Purity Supreme, Inc., 422 Mass. at 568; and

- 4) Counts II, IV, VI, VIII, and X of the Plaintiffs' Complaint, alleging loss of consortium on behalf of Mr. Miranda for his wife's injuries must be dismissed since they are derivative of his wife's claims which are themselves barred. Sena v. Commonwealth, 417 Mass. 250, 264 (1994).

In support of its motion, A.C. Moore submits herewith, and incorporates by reference herein, the accompanying Memorandum in Support of its Motion to Dismiss Plaintiffs' Complaint.

A.C. Moore Arts & Crafts, Inc.  
BY ITS ATTORNEYS,

/s/ Mathew P. Barry  
Emily G. Coughlin, BBO# 554526  
Mathew P. Barry, BBO#657559  
Ryan, Coughlin & Betke, LLP  
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Boston MA 02110  
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Certificate of Service

I Mathew P. Barry hereby certify that on the 28th day of December, 2004 a true copy of the above document was served upon plaintiffs' attorney, Anthony Bott, Esq., the attorney of record by first class mail postage prepaid to: Anthony Bott, Esq., Eight Beach Road, P.O. Box 1137, East Orleans, MA 02643.

/s/ Mathew P. Barry  
Mathew P. Barry